

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

SCOTT AND RHONDA BURNETT,)
RYAN HENDRICKSON, JEROD BREIT,) Civil Action No.
SCOTT TRUPIANO and JEREMY) 4:19-cv-00332-SRB
KEEL, on behalf of themselves)
and all others similarly)
situated,)
Plaintiffs,)
v.)
THE NATIONAL ASSOCIATION OF)
REALTORS, REALOGY HOLDINGS)
CORP., HOMESERVICES OF)
AMERICA, INC., BHH AFFILIATES,)
LLC, HSF AFFILIATES, LLC,)
RE/MAX LLC, and KELLER)
WILLIAMS REALTY, INC.)
Defendants.)

DEPOSITION OF JEFFREY ROTHBART

CHICAGO, ILLINOIS

Wednesday, June 22, 2022

8:11 a.m. Central

1 A Gold Years Advisors, LLC, and Real Estate
2 Dispute Mediation, LLC.

3 Q All right. Do you own an interest in each
4 of those entities as well?

5 A I do.

6 Q What does Stack Real Estate do?

7 A Stack Real Estate is the primary umbrella
8 under which I conduct real estate development and
9 acquisition opportunities.

10 Q What is real estate development?

11 A What is real estate development? I would
12 say -- well, that's a very general question.

13 I would say that real estate development
14 is generally the process of taking underutilized
15 or underdeveloped land and developing it to its
16 highest and best use.

17 Q And what is real estate acquisition?

18 A We look to acquire existing assets that
19 we like from a cash flow or value-added
20 perspective.

21 Q Does Stack Real Estate have any
22 residential real estate developments?

23 A No.

24 Q Does it have any commercial real estate
25 developments?

1 A Well, it does not. Through affiliated
2 entities and project-specific entities, Stack does
3 own indirectly about a hundred acres of raw land
4 for development.

5 Q Does Stack indirectly own any residential
6 real estate?

7 A Well, what I would say is a lot of the
8 land that we currently own is zoned agricultural
9 and would be rezoned in the process of developing
10 that parcel. And some of the land that we do own,
11 I think you could make a strong argument that the
12 highest and best use on some of these parcels
13 would be residential.

14 Q Has Stack Real Estate ever owned directly
15 or indirectly residential real estate?

16 A Yes.

17 Q What was that?

18 A So Stack worked indirectly, was associated
19 with two residential subdivision development
20 projects, both located here in the Chicago MSA.

21 Q Did those developments have names?

22 A Yes.

23 Q What were those names?

24 A One was called Elysian Way, E-L-Y-S-I-A-N
25 Way, and that's located in Deerfield, Illinois.

1 A Correct.

2 Q Is MRED the only Multiple Listing Service
3 you have access to?

4 A Yes.

5 Q Have you ever practiced real estate in
6 Missouri?

7 A Define "practice."

8 Q Have you ever -- you're not a licensed
9 broker in the state of Missouri, correct?

10 A Correct.

11 Q Have you ever represented a seller of a
12 residential property in Missouri?

13 A No.

14 Q Have you ever represented a buyer of a
15 residential property in Missouri?

16 A No.

17 Q Have you ever done any commercial
18 transactions in Missouri?

19 A Yes.

20 Q What was that?

21 A I have owned several office buildings and
22 shopping centers and in quasi-industrial buildings
23 throughout the Kansas City MSA.

24 Q And did you serve as the listing broker
25 when those properties were sold?

1 A Yes.

2 Q Do any of the publications, the articles
3 listed in your appendix discuss residential real
4 estate?

5 A I don't believe so. I believe that when I
6 published those articles, I was working in the
7 commercial side of the business, and those
8 articles relate to my then current activities of
9 commercial real estate.

10 Q Five says: You've been consulted, either
11 as an expert witness or third-party --

12 THE REPORTER: I'm sorry, Counsel. I'm
13 having trouble hearing.

14 MR. GLASS: I'm sorry. I'll slow down.

15 (Outside audio interference.)

16 MR. GLASS: Airport noise.

17 BY MR. GLASS:

18 Q "I have consulted, either as an expert or
19 on a third-party basis, in over one hundred
20 matters.

21 That's paragraph 5. Are you with me?

22 A Yes.

23 Q Did any of those matters involve
24 residential real estate?

25 A Yes.

1 Q How many?

2 A I don't know.

3 Q Approximately how many?

4 A I don't know.

5 Q Can you name the ones that you're thinking
6 of when you say that they did involve residential
7 real estate?

8 A There's way too many for me to name.

9 Q Let's start with the first one that comes
10 to mind.

11 A It was a case White v. Hewitt.

12 Q H-E-W-E-T-T?

13 A I don't recall.

14 Q What was the issue in that case?

15 A That case was about breach of
16 representation and warranty in the purchase of a
17 residential home.

18 Q What is the next one that comes to mind?

19 A I don't -- I don't recall all the entity
20 names, sir, or all the case names.

21 Q Do any of them -- did any of the cases
22 involve residential real estate brokerage?

23 A Yes.

24 Q Which ones?

25 A I don't recall.

1 Q Can you name one?

2 A Not off the top of my head.

3 Q Is there anything in your report that
4 could help you remember that?

5 A Well, there is -- as part of my exhibits
6 to my report, there is an abbreviated list of the
7 cases of which I've testified or given testimony
8 in the last four years pursuant to the federal
9 rules.

10 I don't know that this -- this is not a
11 complete and exhaustive list of the matters in
12 which I've worked, and so I don't -- you know, I
13 can go through here and try to tell you which ones
14 I recall being residential, but by no means is
15 this an exhaustive representation of my
16 experience.

17 Spector versus Hammer was a residential
18 transaction. It didn't have to do with brokerage
19 but it was a residential transaction.

20 Brian Germain and Rita Germain was also a
21 residential transaction, but, again, did not have
22 to do with brokerage. But, again, this isn't a
23 full list so I can't answer that question.

24 Q Okay. So based on the list that's
25 attached to your expert report, there's two that

1 dealt with residential real estate at all, and
2 neither of those involved residential real estate
3 brokerage; is that correct?

4 A I would say that if you want to narrow my
5 experience to only these to only residential and
6 to only brokerage, it appears that that is
7 correct.

8 THE REPORTER: May we go off the record
9 for a moment?

10 MR. GLASS: Yeah, let's go off the record.

11 THE VIDEOGRAPHER: Off the record,
12 9:04 a.m.

13 (Recess taken from to 9:04 a.m. to
14 9:09 a.m.)

15 THE VIDEOGRAPHER: On the record, 9:09.

16 BY MR. GLASS:

17 Q Let's look back at Exhibit 1, which is
18 your report. Paragraph 6 says you have a B.A.
19 from Emory.

20 Did you have a major?

21 A Political science.

22 Q You have a Juris Doctor from IIT-Chicago.
23 Did you have a focus in your law school studies?

24 A I would say I focused on -- I went to law
25 school knowing that I didn't want to be a

1 that you have served as a hired broker in
2 residential real estate transactions, correct?

3 A Correct.

4 Q And could you remind me approximately how
5 many transactions you served as a buyer broker in
6 residential transactions?

7 A I don't recall the exact number, but I
8 would say plus or minus five.

9 Q And did you have any preexisting
10 relationship with the clients, the buyers you
11 represented in those transactions?

12 A I did.

13 Q What was that relationship?

14 A Well, the two that are most popping into
15 my head are when I purchased my own home after my
16 divorce, and I helped my cousin and his -- or her
17 husband purchase their home as well.

18 Q Okay. So -- so the plus or minus five,
19 one of those transactions was your own
20 transaction?

21 A Yes.

22 Q Okay. And you had another -- was it one
23 or two that you said for a cousin?

24 A I believe it was one. I don't recall the
25 other ones I've been involved in.

1 Q Explain that answer, please.

2 A Through my brokerage, we made a deal with
3 my cousin that he would receive back as a credit
4 at closing 50 percent of the fee that I was to
5 earn.

6 Q Okay. So -- so part of the commission
7 that was offered to you through the brokerage, you
8 agreed to share part of that with your cousin as
9 the buyer?

10 A Correct.

11 Q Have you been involved in any residential
12 transactions as a buyer broker where you didn't
13 have a personal connection, like a family
14 connection, with the buyer you represented?

15 A I seem to recall doing more than those two
16 buyer broker transactions, but I can't recall the
17 other ones with specificity so it's a hard
18 question for me to answer.

19 Q And did you advertise your services as a
20 buyer broker?

21 A No.

22 Q Did you ever attempt to get business as a
23 buyer broker by claiming your services were free
24 to the buyer?

25 A I don't believe so.

1 but how did it come to be that you were affil- --
2 became affiliated with the Berkshire related
3 entity versus some other brand?

4 A So I interviewed top four, five largest
5 brokerage firms in the Chicagoland area with
6 offices locally by where the development project
7 that I was working on was, and I felt most
8 comfortable with the managing broker at Berkshire
9 Hathaway. I liked him the best of the managing
10 brokers. The commission splits were all
11 substantially similar, so I went with the managing
12 broker who I felt I liked the best, and that was
13 at Berkshire.

14 Q And how long have you been affiliated with
15 that Berkshire entity now?

16 A My best guess is 2016-ish.

17 Q The residential transactions that -- where
18 you were a buyer broker, did those occur during
19 the time period you were affiliated with the
20 Berkshire entity?

21 A I believe so, yes.

22 Q And on the list side for residential
23 transactions, approximately how many list side
24 residential transactions have you handled?

25 A I'm going to go with that same five to ten

1 number that I provided earlier today.

2 Q And when was the most -- when was the last
3 such transaction that you were involved in, last
4 list side residential transaction?

5 A Several years ago. It was part of the
6 Elysian Way development.

7 Q And was that before or after you became
8 affiliated with Berkshire?

9 A After.

10 Q And were your list side transactions all
11 MLS transactions?

12 A Yes.

13 Q And you offered compensation in those
14 transactions, cooperative compensation in those
15 transactions?

16 A You have to under the current scheme to be
17 competitive.

18 Q And what amount did you offer?

19 A I don't recall.

20 Q Did you offer the same amount in each
21 transaction?

22 A I don't recall.

23 Q How did you set the amount that you
24 offered?

25 A I took guidance from my managing broker.